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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,845	04/27/2007	Minchu Sonnenschein	0-05-037	9356
7590 Kevin D McCarthy Roach Brown McCarthy & Gruber 420 Main St 1620 Liberty Building Buffalo, NY 14202				
EXAMINER				
LOW, LINDSAY M				
ART UNIT		PAPER NUMBER		
3721				
MAIL DATE		DELIVERY MODE		
08/27/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/526,845

Applicant(s)

SONNENSCHIN ET AL.

Examiner

LINDSAY M. LOW

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-10 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 03 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

Specification

2. The disclosure is objected to because of the following informalities: on page 9 line 2, a space should be inserted between "invention" and "mounted." Appropriate correction is required.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the spherical cartridge surface (claim 8) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "the front surfaces." Claim 2 recites the limitations "the proximal end" and "the distal end." Claim 3 recites the limitation "the face." Claim 4 recites the limitation "the area of the array." There is insufficient antecedent basis for these limitations in the claims.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sonnenschein (2001/0056282) in view of Jankowski (2004/0004105).

Sonnenschein discloses the same invention including an articulation section, a staple cartridge, a staple firing mechanism, and anvil portion as shown in Fig. 16B.

Regarding claims 4 and 5, the cartridge surface is lowered in the area of the array of staples, as defined by the bottom surfaces of holes 142 (Fig. 20B). The two surface levels assist in correcting longitudinal misalignment.

Regarding claim 6, an ultrasound positioning assembly (Fig. 43A) has a recess and a step structure, the step structure being a reflector of ultrasound radiation. The reflector can be on the cartridge (paragraph 0330).

Regarding claim 9, can be seen in Fig. 16B, the articulation section is capable of being over-bent, as the section is flexible.

Regarding claim 10, the staple firing mechanism has a plunger, cams (paragraph 0057) and staple pushers (see figures).

Sonnenschein fails to disclose front surfaces of the cartridge and the anvil being curved. However, Jankowski teaches curved front surfaces (Fig. 4A and 4B) of both a cartridge and an anvil in a surgical stapler for the purpose of enhancing alignment of the staple cartridge and anvil in transverse and longitudinal directions (abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide curved front surfaces on Sonnenschein's cartridge and anvil for the purpose of enhancing alignment of the staple cartridge and anvil in transverse and longitudinal

directions. Regarding claim 7, note that Jankowski's cartridge surface is a section of a right circular cylinder.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sonnenschein (2001/0056282) in view of Jankowski (2004/0004105) as applied to claim 1 above, and further in view of Oberle (4,318,548)

The modified device of Sonnenschein discloses the same invention substantially as claimed except for the cartridge surface being spherical. However, Oberle teaches a spherical surface 9 for the purpose of aligning with an internally spherical surface 8. The spherical shape allows the adjoining components to be angled for adjustment during assembly (col. 2 lines 48-51). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a spherical surface on the cartridge for the purpose of allowing the anvil to be angularly adjusted relative to the cartridge during the connection of the anvil to the cartridge.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSAY M. LOW whose telephone number is (571)272-1196. The examiner can normally be reached on Monday thru Friday 7:30 to 5:00.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3721

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. M. L./
Examiner, Art Unit 3721

/Rinaldi I Rada/
Supervisory Patent Examiner, Art Unit 3721
8/19/2008